



Enforcement Division

Advisory

**To: Diesel Fuel Producers,
Distributors, and
Retailers.**

Number 101

December 7, 1993

Diesel Fuel Regulations – Questions and Answers on Enforcement Issues

On December 7, 1993, a letter was sent to parties interested in the California Air Resources Board's Diesel Fuel Regulations. The letter included questions and answers on diesel fuel regulatory enforcement issues.

Although in 1993 advisory number "101" was set aside for "Diesel Fuel Regulations – Questions and Answers on Enforcement Issues", the document was issued as a letter instead of an advisory.

This advisory cover page was created retroactively (in January, 2006) to officially identify the December 7, 1993 letter (attached) and the included questions and answers on diesel fuel regulatory enforcement issues as Advisory Number 101.

If you have any questions please contact Mr. Mark Stover at (916) 322-2056, or email mstover@arb.ca.gov.

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AIR RESOURCES BOARD

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December 7, 1993

Dear Interested Parties:

Diesel Fuel Regulations--Questions and Answers on Enforcement Issues

In the weeks preceeding the implementation of the new diesel regulations for sulfur and aromatic hydrocarbon contents, member(s) of my staff met individually with diesel producers, distributors, and users to discuss enforcement and regulation implementation issues. There were a few questions raised at these meetings that could not be answered at that time. The enclosed document is a list of those questions along with my answers. We hope this will be useful to you.

If you were one of the participants in these meetings, I extend my thanks for taking the time to meet and discuss the issues.

If you have any questions, you may telephone me at (916) 322-6022

Sincerely,

A handwritten signature in dark ink, appearing to read "James J. Morgester".

James J. Morgester, Chief
Compliance Division

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State of California
AIR RESOURCES BOARD
Meetings with Industry on the October 1993 Diesel Fuel Regulations
Questions and Answers

Question 1: Can a producer use a designated alternative limit (DAL) for complying with the certified diesel fuel formulations (alternative formulations)?

Answer: The regulation allows for DALs for the 10% limit and for small refiners and independent refiners for their 20% limit. There is no provision for DALs for alternative formulations or variances.

Question 2: Can a producer use the same DAL account for its two refineries located in California?

Answer: Yes, if the producer owns the two refineries.

Question 3: When using the designated alternative limit option, is the company allowed to report an estimate of the volume of the diesel in its original notification to the CARB for that batch of diesel, and then update that volume value later when the actual volume is known?

Answer: Yes, the company may update the volume information on its DAL reports. A protocol between the company and the CARB may be necessary if your company intends to use this option. Please contact the Manager of the Field Enforcement Section at (916) 322-6033.

Question 4: Instead of submitting the updated "actual" volume right after it is known, can the company report the "actual" volume, for example, once per week for all the batches that occurred that week?

Answer: The company should contact the Compliance Division at (916) 322-6033 to enter into a protocol for this type of reporting.

Question 5: Does the company have to commit to a one year time period if they wish to use the designated alternative limit option?

Answer: No.

Question 6: The regulation states a flat limit for aromatics. The aromatics regulation also allows for "averaging" through the designated alternative limit (DAL) option. However, the DAL option does not contain an aromatics value lower than the flat limit around which one has to average. This means that the aromatics regulation does not have a disincentive for averaging. Is this correct?

Answer: Yes, this is correct.

Question 7: Where will the CARB enforce the diesel regulations?

Answer: The CARB will enforce the regulation at production and import facilities, at terminals, at service stations, and any location where motor vehicles are fueled.

Question 8: Who will enforce US EPA diesel?

Answer: The US EPA will enforce their own regulation. If the CARB obtains information which does not substantiate a violation of CARB regulations but may substantiate a violation of the US EPA regulations, the CARB may forward that information to the US EPA for their action.

Question 9: What is meant by the terms: CARB diesel, CARB non-vehicular diesel, US EPA diesel, and US EPA off-road diesel?

Answer: These terms are not found in the CARB or US EPA regulations. However, they have often been used by refiners, carriers, and others to describe diesel fuel subject to different standards. "CARB diesel" has referred to diesel fuel represented as meeting all CARB and US EPA requirements for motor vehicle diesel fuel; this fuel may be sold for use in any motor vehicle in California, and for any other purposes. "CARB nonvehicular diesel" has described diesel fuel represented as not meeting either the CARB and the US EPA requirements for motor vehicle diesel fuel. In California, this fuel can only be used for applications such as marine, railroad and stationary sources--it cannot be used for either on-road or off-road vehicles. "US EPA off-road diesel" would have the same meaning. Under the US EPA regulations, any diesel fuel in this category must be dyed blue unless it has a sulfur content not exceeding 500 ppm. The term "US EPA diesel" has described diesel fuel that meets the US EPA's requirements pertaining to sulfur and aromatics/cetane number, but does not meet the CARB's aromatics requirements. In California, this fuel may only be shipped for use in other states, or used in California in the same applications as "CARB nonvehicular fuel".

Question 10: Which fuel has to be dyed blue?

Answer: The only legal requirement for the blue dye applies to the US EPA off-road diesel having a sulfur content exceeding 500 ppm. Diesel fuel identified as "CARB nonvehicular diesel fuel" and having a sulfur content exceeding 500 ppm will also be subject to the federal blue dye requirement.

Question 11: At a terminal, can US EPA diesel be mixed with CARB diesel?

Answer: All fuel sold or supplied to motor vehicles in California must meet the CARB specifications. If the US EPA diesel does not also meet all of the the CARB standards for diesel, it should not be mixed with CARB diesel.

Question 12: Fuel at a terminal will be commingled. What specification does that fuel have to meet?

Answer: The fuel must meet the specifications that were applicable when the producer or importer first sold or supplied the fuel. The comingling of two or more complying fuels does not, in itself, constitute a violation.

Question 13: Now that the CARB has approved the SFC as an alternative test method, will the CARB delete the FIA test method?

Answer: The FIA is the test method identified in the regulation for determining compliance. The SFC was approved as being equivalent through an executive order. These two test methods are available to the CARB for use in compliance testing.

However the CARB will be using the SFC test method. The CARB is not planning to change the regulation at this time. Industry may petition the Board to delete the FIA test method from the regulation and to adopt the SFC as the method designated in the regulation.

Question 14: Paragraph (f) of the regulation requires that the producer or importer test its diesel. If the producer is complying with the regulation (other than the flat limit) by such methods as the small refiner's suspension or exemption, independent refiner's exemption, alternative diesel formulation, variance, or DAL are they required to test per paragraph (f)?

Answer: The regulation calls for testing. It makes no distinction of the method the company is pursuing for compliance. Therefore, all producers and importers must test.

Question 15: If a major refiner buys fuel from a small or independent refiner, specifications does the fuel have to meet when the major refiner sells it?

Answer: If the diesel fuel sold by the small refiner meets the specifications applicable to the small refiner's diesel fuel, then the major refiner may lawfully sell the fuel.

Question 16: In regards to Question 15 (above), what documentation needs to follow the fuel? If no documentation is required by law, what can the company do to show the CARB that it is operating in good faith to comply with the law?

Answer: The regulation does not require any documentation to go along with the sale. A prudent purchaser would obtain documentation that the fuel met the specification that the seller was subject to at the time of the sale. A company may send an example of such documentation to the CARB for review and comment.

Question 17: A terminal facility receives diesel fuel from many customers and clients. Do the customers and clients have to state that the fuel meets CARB specifications.

Answer: The regulation does not require such a statement.

Question 18: What documents are needed, by the terminal, when fuel is shipped to their facility? What documents are required by law, and what documents could be to show CARB that they were doing legitimate business?

Answer: The regulation does not require any documents in this case. A prudent operator would obtain documents from its clients stating that the fuel is in compliance with the CARB regulation and specify the method of compliance (ie. small refiners exemption, variance, etc.)

Question 19: Should these documents refer to each sale, pipeline tender, or batch of diesel or can it be an annual contract agreement?

Answer: There are no specific requirements for this type of documentation. The company may decide which method works best for itself. The company may send an example of such documentation to the CARB for review and comment.

Question 20: Does each person who resells the fuel have to certify that the CARB specifications are met?

Answer: The regulation does not require that each reseller has to certify the fuel

Question 21: Does a small refiner have to label its bills of lading stating that the fuel meets the small refiners suspension or small refiners exemption requirements?

Answer: The regulation does not require any documentation to go along with these sales.

Question 22: Does a terminal facility have to label the bills of lading for trucks or for pipeline shipments? If so, what wording?

Answer: The regulation, in most cases, does not require any label. However, a prudent terminal operator will post a sign on the rack and stamp the bills of lading and the invoice to identify the product as either US EPA diesel, variance diesel, exempt diesel, etc. and a statement indicating where that fuel can or cannot be sold. This may not release the terminal from responsibility, but will definitely be a show of good faith towards compliance with the regulation.

In the case of noncomplying diesel fuel claimed by a refiner or terminal to be exempt from the sulfur and aromatic limits because it is not for use in California motor vehicles, the fuel must be labeled as such.

Question 23: If a refinery hires the terminal to blend components to make diesel, and the refinery tests the fuel to make sure it is complying fuel, will the terminal be considered the producer of the fuel? Will the terminal be responsible for the fuel at all?

Answer: The terminal will not be considered the producer of the fuel. However, since the regulation is a strict liability regulation the supplier of the fuel could be cited for the violation. The Compliance Division of the CARB tries to determine the party responsible for the violation and cite them accordingly.

Question 24: Is a terminal facility responsible for the fuel it terminals? Does it have to test the fuel it handles?

Answer: The terminal should not handle fuel that it knows is non-complying. Since the regulation is a strict liability regulation the supplier of the fuel could be cited for the violation. The Compliance Division of the CARB tries to determine the party responsible for the violation and cite it accordingly. The terminal is not required to test the fuel it handles.

Question 25: A refinery has an alternative diesel formulation. Can they have another refiner make this fuel and then buy it from them? Can this other refiner be out-of-state and therefore the fuel would be imported into the state?

Answer: Yes, another refinery may be the producer of the alternative formulation fuel. Yes, the alternative formulation diesel may be imported; in this case it would be reported by the importer.

Question 26: A producer has two alternative diesel formulations. Can it have an "in-between" specification so that it can blend both types of complying fuel?

Answer: The company should petition the Stationary Source Division of the CARB for approval of this proposal.

Question 27: A small refiner's aromatics content limit is 20% as a result of receiving an exemption from the aromatics content regulation. It then close down its refinery. What aromatics limit must it then meet?

Answer: If a facility is no longer a refinery, the operator is no longer a refiner and cannot use its relationship to the facility as the basis for the operator qualifying as a small refiner. Further, under Section 2282(e)(1), the less stringent 20 percent limit does not apply to a small refiner in a quarter when less than 25 percent of the diesel fuel supplied from the refinery was produced from the distillation of crude oil at the refinery.

Question 28: What aromatics compliance options are available to a terminal company that wants to import diesel? Variance?

Answer: The terminal then becomes an import facility and is subject to the standards for an importer, or it may petition for a variance from those requirements.

Question 29: A small refiner obtains a suspension from the sulfur regulation. Does the regulation still prohibit the small refiner from supplying high sulfur diesel to the South Coast Air Basin (SCAB)?

Answer: Section 2280 of the California Code of Regulations prohibits the sale of high sulfur diesel in the SCAB. This regulation terminates on October 1, 1993 except for those refineries that receive a suspension under Section 2281(g)--for these refineries the regulation remains in effect through September 30, 1994.

Question 30: A producer has an alternative formulation calling for 28% aromatics content. Can that producer buy 20% aromatics content diesel from another refiner and then blend in their own high aromatics content (ie. 32% aromatics) blending components so that the resulting diesel has an aromatics content of 28%?

Answer: The producer may not buy lower aromatics content diesel from another refiner and use it to blend-down its high aromatics blending components to produce a fuel to comply with an alternative formulation or with a DAL.

Question 31: Who should a producer contact when they notify the CARB of a DAL notification or when they change from one alternative formulation to another?

Answer: The producer should notify the Manager, Field Enforcement Section of the Compliance Division by FAX (916) 445-5745. If there is a problem with the FAX, they should telephone (916) 322-6033.

Question 32: For variance fuel, who in CARB will handle the: Letter of credit, the reporting, the escrow account, and the variance fees?

Answer: The Stationary Source Division will handle these items.

Question 33: Example:

- o A refiner always tests its diesel and makes sure it is in compliance before it releases it for sale. The refiner understands that their test result should be at or below the legal limit. They understand that they are not allowed the testing reproducibility.
- o The refiner also has an oversight program which they consider a separate enforcement program. The people in the oversight program sample and test fuel throughout their marketing and distribution system (downstream of the refinery) to make sure that everything is still in compliance.
- o The refiner believes that the oversight program is important, but it also realizes that the more times one tests the fuel, the greater the chances are that one will obtain a test result which may be higher than the legal limit but less than the legal limit plus the reproducibility. The refiner wants to continue the oversight program but does not want to be discouraged from having an extensive oversight program when they obtain a test result as described above.
- o The refiner offers the following proposals:
 - Proposal 1: During the oversight program, if the test result is above the legal limit but less than the legal limit plus the reproducibility, then the oversight program will retest the fuel as soon as possible. Meanwhile they will still sell the fuel. If the second test is also in that range, they will stop selling the fuel and fix the problem. The refiner wants to know if the CARB would allow them to continue selling during the period between the first and second tests.

Answer to Proposal 1: The CARB will not prohibit sales from occurring between the first and second tests. If the second test result is below the legal limit, the CARB will not take any enforcement action. However if the second test result is above the legal limit, the company would be liable for all sales of that fuel since the last delivery into that tank until the second test (and beyond, if the company continues to sell the fuel)

Proposal 2: Since the refiner considers their oversight program as a separate enforcement program, they request that no CARB enforcement action be taken unless their oversight test result exceeds the legal limit plus the reproducibility (or possibly, the repeatability).

Answer to Proposal 2: The CARB will not agree to this proposal.

If you have any further questions or concerns, please telephone the Manager of the Field Enforcement Section at (916) 322-6033.